

Revised Draft Proposed Model Statute Regarding Partnership or
Pass-Through Entity Income That Is Ultimately Realized
By an Entity That Is Not Subject to Income Tax
(February 2013)
(Proposed new language highlighted in yellow)

When 50 per cent or more of the capital interests or profits interest in an entity for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162 and that would otherwise be treated as a partnership or disregarded entity for purposes of [insert applicable state tax or taxes] is owned, directly or indirectly, by [identify each entity type that is not subject to income tax and that state wants to cover under this provision, such as “an insurance company,” with a citation to the state tax statute applicable to each such entity type], the net income [or alternative tax base] that passes through to such [name each entity type identified above, e.g. “insurance company.”] shall be taxed to the partnership or disregarded entity as if the partnership or disregarded entity were a corporation subject to tax under chapter [insert state statute]. To the extent applicable, income that is taxable to the partnership or disregarded entity pursuant to this section, and any related tax attributes and activities, shall be included and taken into account in a combined report filed under [insert state statute]. As used herein, the term “partnership or disregarded entity” shall not include a real estate investment trust (REIT) within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended.

Optional additional provisions for the situation in which 50 per cent of more of the capital interests or profits interest of the partnership or disregarded entity is owned by an insurance company. One or both of these additional provisions could be added to the main text above.

1. For purposes of this section, when 50 per cent or more of the capital interests or profits interest of the partnership or disregarded entity is owned, directly or indirectly, by an insurance company, in determining the taxable income of the disregarded entity or partnership there shall not be taken into account any items of income, deduction, loss or credit and any related tax attributes and activity that directly derive from a transaction between such entity and the insurance company where such transaction is one in which the partnership or disregarded entity performs an integral component of the insurance business, such as the administration of the insurance claims function.
2. [Further,] [For purposes of this section, when 50 per cent or more of the capital interests or profits interest of the partnership or disregarded entity is owned, directly or indirectly, by an insurance company,] in determining the taxable income of the disregarded entity or partnership there shall not be taken into account any items of income, deduction, loss or credit and any related tax attributes and activity derived with respect to the rental, sale or other disposition of real estate directly owned.